

# Secretary of Commerce Review Draft

## **Regulatory Amendment to Clarify Certain Provisions Pertaining to the Harvest Specifications for Other Species**

### **Regulatory Impact Review**

**February 2010**

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**Abstract:** This document contains a Regulatory Impact Review of regulatory amendments in response to the new treatment of “other species” categories under Amendment 96 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 87 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). This amendment will be adopted to clarify regulations in response to new guidelines for National Standard 1 for annual catch limit requirements. Amending the regulations involves (a) removing the words “and the ‘other species’ category” where they are no longer appropriate; (b) in the GOA, eliminating initial reserves for the “other species” grouping, and creating initial reserves for squid, octopus, sharks, and sculpins; and (c) in the GOA and BSAI, treating the remaining relevant species as a grouping for the purposes of maximum retainable amount and prohibited species catch management. The analysis in this document addresses the requirements of Executive Order 12866.

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## Executive Summary

The North Pacific Fishery Management Council has amended its groundfish fishery management plans (FMPs) to comply with the new annual catch limit (ACL) and accountability measure (AM) guidelines issued by NMFS for National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

The action analyzed in this RIR amends fishery management regulations to improve their clarity given the FMP amendments. This regulatory impact review (RIR) provides a cost-benefit analysis of proposed revisions. The analysis in this document addresses the statutory requirements of the Presidential Executive Order 12866 (E.O. 12866).

The analysis considers “no action” and “action” alternatives. The key changes under the action alternatives involve (a) removing the words “and the ‘other species’ category” where they are no longer appropriate; (b) in the Gulf of Alaska (GOA), eliminating initial reserves for the “other species” grouping, and creating initial reserves for squid, octopus, sharks, and sculpins; and (c) in the GOA and Bering Sea and Aleutian Islands (BSAI), treating the remaining relevant species as a grouping for the purposes of maximum retainable amount (MRA) and prohibited species catch (PSC) management.

The proposed changes are needed to clarify regulations, following the amendment of the FMPs for Groundfish of the GOA and for the FMP for Groundfish of the BSAI. They do not impose, increase, relax, or remove substantive restrictions on any entity. They create some benefits by making regulations easier to follow, without creating more than *de minimus* administrative costs.



<b>EXECUTIVE SUMMARY .....</b>	<b>III</b>
<b>1 REGULATORY IMPACT REVIEW.....</b>	<b>7</b>
Introduction.....	7
Statutory Authority .....	7
Problem Statement.....	8
The Alternatives.....	8
Cost and benefit analysis .....	9
<b>2 APPENDIX .....</b>	<b>9</b>
<b>3 SOURCES.....</b>	<b>1</b>
<b>4 PREPARERS AND PERSONS CONSULTED.....</b>	<b>1</b>

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# 1 Regulatory Impact Review

## Introduction

The North Pacific Fishery Management Council has amended its groundfish fishery management plans (FMPs) to comply with the new annual catch limit (ACL) and accountability measure (AM) guidelines issued by NMFS for National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

The action analyzed in this RIR amends fishery management regulations to improve their clarity given the FMP amendments. This regulatory impact review (RIR) provides a cost-benefit analysis of proposed revisions. The analysis in this document addresses the statutory requirements of the Presidential Executive Order 12866 (E.O. 12866).

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, September 30, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

*In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

E.O. 12866 further requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A significant regulatory action is one that is likely to –

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

## Statutory Authority

The National Marine Fisheries Service (NMFS) manages the U.S. groundfish fisheries of the GOA, Bering Sea, and Aleutian Islands in the Exclusive Economic Zone (EEZ) under the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area and the FMP for Groundfish of the Gulf of Alaska. The FMPs were prepared by the North

Pacific Fishery Management Council (Council) under the MSA. Regulations implementing the FMPs appear at 50 CFR part 679 and part 680. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

## Problem Statement

On January 16, 2009, NMFS issued final guidelines for National Standard 1 (NS 1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (74 FR 3178). They provide guidance on how to comply with new annual catch limit (ACL) and accountability measure (AM) requirements for ending overfishing of fisheries managed by federal fishery management plans. ACL is the amount of fish allowed to be caught in a year.

A NMFS Alaska Region review of the BSAI and GOA Groundfish FMPs found there were inadequacies in the FMP texts that needed to be addressed. Several work groups (e.g., ABC/ACT Control Rules, Vulnerability Evaluations) have been created to produce reports on how to carry out the more technical components of the NS 1 guidelines. Statutory deadlines require compliance with the overfishing requirements by the start of the 2011 fisheries. In April 2010, the Council adopted Amendments 96 to the FMP for groundfish in the BSAI and 87 to the FMP for groundfish in the GOA, revising the FMPs to comport with the final guidelines.

Among the key changes to the FMPs is the reassignment of species now grouped as “other species” in the BSAI and GOA groundfish FMPs as target species. These species include squid, sculpins, sharks, and octopus in the GOA, and sculpins, sharks, and octopus in the BSAI. Although these species become target species, they continue to be grouped within each region for the purpose of maximum retainable amount (MRA) and prohibited species catch (PSC) management. The FMPs incorporate other changes, as well.

The **purpose** of this action is to clarify regulatory language to more accurately reflect the intent of the BSAI and GOA groundfish FMPs as amended by Amendments 96 and 87. This action is **needed** to clarify regulatory text, following the adoption by the Council and Secretary of NS1 amendments to the groundfish FMPs. The **objective** of this action is to revise the regulatory text to more clearly describe the treatment of “other species” categories under the FMPs for the purpose of harvest specifications.

## The Alternatives

The alternatives under consideration for this action are:

Alternative 1. No action

Alternative 2. Revise regulations to more precisely reflect the FMPs as modified by Council action to implement the ACL provisions. The detailed regulatory changes involved in this alternative are listed in the appendix to this RIR-IRFA.

The key changes under Alternative 2 involve (a) removing the words “...and the ‘other species’ category...” where they are no longer appropriate; (b) in the GOA, eliminating initial reserves for the “other species” grouping, and creating initial reserves for squid, octopus, sharks, and sculpins; and (c) in the GOA and BSAI, treating the species currently in the “other species” category as a grouping for the purposes of MRA and PSC management.

Given the objective of this action, no additional alternatives are available.



## Cost and benefit analysis

The proposed regulatory changes do not impose, increase, relax, or remove substantive restrictions on any entity. They are not necessary for the Council's FMP to have effect.

- a) The deletion of the words "'other species' category" amends the language when it is used to refer to total allowable catches (TACs) under the harvest specifications. The Council's action would leave the "'other species' category" empty. Although leaving the category would not create a need to set a positive TAC for the species that were formerly in the group, it could be confusing.
- b) Section 679.20(b)(2) requires 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "'other species' category" be set aside in reserves for possible apportionment at a later date during the fishing year. NMFS "reapportions" these reserves in advance of the fishing season. For 2009 and 2010, NMFS proposed reapportionment of all the reserves in the proposed 2009 and 2010 harvest specifications, published in the *Federal Register* on December 2, 2008 (73 FR 73222). NMFS received no public comments on the proposed reapportionments. For the final 2009 and 2010 harvest specifications, NMFS reapportioned, as proposed, all the reserves for pollock, Pacific cod, flatfish, and "other species." Initial reserves have been reapportioned in this way in the GOA for over 20 years (since 1988). TACs in the published harvest specifications reflect reapportionment of reserve amounts for these species and species groups. Thus, eliminating reserves for "other species" and creating them for sharks, squid, octopus, and sculpins, has no impact on fishing operations or fishery management.
- c) Treating the species, formerly in the "other species" category, as a grouping for the purposes of MRA and PSC management means that they will continue to be treated exactly as they are now.

The proposed changes will clarify regulations, if the FMPs are amended. They thus create some direct, and immediate, benefits by making regulations easier to follow, without creating more than *de minimus* administrative costs.

## 2 Appendix

Regulations that may be impacted by NS 1 FMP Amendments. Prepared on March 9, 2010, by NMFS Sustainable Fisheries.

These draft regulations assume that the FMP amendment would remove the other species category and manage species under this category as separate target species groups and that management of these species for purposes of the MRA and PSC would remain unchanged. Skates would be broken out to several species levels on Table 2a to allow for management at the species level.

The following notes show the proposed changes to regulations:

### 679.2 Definitions

Groundfish means

(1) FMP species as listed in Table 2a to this part.

(2) Target species ~~and the “other species” category~~, specified annually pursuant to § 679.20(a)(2) (See also the definitions for: License limitation groundfish; CDQ species; and IR/IU species of this section).

License limitation groundfish means target species ~~and the “other species” category~~, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 feet (18.3 m) LOA or less, are not considered license limitation groundfish.

Other species is a category **of target species for the purpose of MRA and PSC management**, including management for MRAs in the GOA rockfish program under Table 30 to this part, and for BSAI Halibut PSC Sideboard Limits for AFA Catcher/Processors and AFA Catcher Vessels in Table 40 to this part that consists of groundfish species in each management area ~~that are not specified as target species~~ **These target species are managed as an other species group and identified in** ~~(see Tables 10 and 11 to this part pursuant to § 679.20(e)).~~

Target species are those species or species groups, ~~except the “other species” category~~, for which a TAC is specified pursuant to § 679.20(a)(2).

## 679.20 Management Measures

### (a) Harvest limits

(1) OY (i) BSAI and GOA. The OY for BSAI and GOA target species ~~and the “other species” category~~ is a range or specific amount that can be harvested consistently with this part, plus the amounts of “nonspecified species” taken incidentally to the harvest of target species ~~and the “other species” category~~. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(A) The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 million to 2.0 million mt.

(B) The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(ii) Arctic Management Area. The OY for each target fish species identified in the Fishery Management Plan for Fish Resources of the Arctic Management Area regulated by this section and by part 600 of this chapter is 0 mt.

\* \* \* \* \*

(2) TAC. NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species ~~and the “other species” categories~~. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

(3) Annual TAC determination. The annual determinations of TAC for each target species ~~and the “other species” category~~, and the reapportionment of reserves may be adjusted, based upon a review of the following:

(i) Biological condition of groundfish stocks. Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the groundfish complex and its component species groups; assessments of the stock condition of each target species ~~and the “other species” category~~; assessments of the multispecies and ecosystem impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

\* \* \* \* \*

### (b) Reserves

(1) BSAI.

(i) Nonspecified reserve. Fifteen percent of the BSAI TAC for each target species ~~and the “other species” category~~, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, which includes Pacific cod, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve ~~and the “other species” category~~. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve ~~or the “other species” category~~, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species ~~or the “other species” category~~.

\* \* \* \* \*

(2) GOA. Initial reserves are established for pollock, Pacific cod, flatfish, **squid, octopus, sharks, and sculpins** ~~and “other species,”~~ which are equal to 20 percent of the TACs for these species or species groups.

\*\*\*\*\*

*(c) Annual specifications.*

(1) Proposed specifications.

\* \* \* \* \*

(iii) GOA. The proposed specifications will specify for up to two fishing years the annual TAC for each target species ~~and the “other species” category~~ and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) BSAI. The proposed specifications will specify for up to two fishing years the annual TAC for each target species ~~and the “other species” category~~ and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

\*\*\*\*\*

(3) Final specifications.

\* \* \* \* \*

(ii) GOA. The final specifications will specify for up to two fishing years the annual TAC for each target species ~~and the “other species” category~~ and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) BSAI. The final specifications will specify for up to two fishing years the annual TAC for each target species ~~and the “other species” category~~ and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

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*(d) Fishery closures.*

(1) Directed fishing allowance.

(i) General. If the Regional Administrator determines that any allocation or apportionment of a target species ~~or “other species” category~~ specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

\* \* \*

(iii) Directed fishing closure.

\* \* \* \* \*

(B) Retention of incidental species. Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species ~~or species group, or the “other species” category~~ is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

\* \* \* \* \*

(2) Groundfish as prohibited species closure.

When the Regional Administrator determines that the TAC of any target species ~~or the “other species” category~~ specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the *Federal*

**Register** requiring that target species or the “other species” be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

**§ 679.25 Inseason adjustments.**

**(a) General**

\*\*\*\*\*

(2) Determinations.

(iii) \* \* \*

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species or the “other species” category.

**3 TABLE 2A TO PART 679 – SPECIES CODES: FMP GROUND FISH**

Species Description	Code	Species Description	Code
Atka mackerel (greenling)	193	Sharpchin ( <i>S. zacentrus</i> )	166
Flatfish, miscellaneous (flatfish species without separate codes)	120	Shortbelly ( <i>S. jordani</i> )	181
		Shortraker ( <i>S. borealis</i> )	152
<b>FLOUNDER</b>		Silvergray ( <i>S. brevispinis</i> )	157
Alaska plaice	133	Splitnose ( <i>S. diploproa</i> )	182
Arrowtooth and/or Kamchatka	121	Stripetail ( <i>S. saxicola</i> )	183
Starry	129	Thornyhead (all <i>Sebastolobus</i> species)	143
Octopus, North Pacific	870	Tiger ( <i>S. nigrocinctus</i> )	148
Pacific cod	110	Vermilion ( <i>S. miniatus</i> )	184
Pollock	270	Widow ( <i>S. entomelas</i> )	156
<b>ROCKFISH</b>		Yelloweye ( <i>S. ruberrimus</i> )	145
Aurora ( <i>Sebastes aurora</i> )	185	Yellowmouth ( <i>S. reedi</i> )	175
Black (BSAI) ( <i>S. melanops</i> )	142	Yellowtail ( <i>S. flavidus</i> )	155
Blackgill ( <i>S. melanostomus</i> )	177	Sablefish (blackcod)	710
Blue (BSAI) ( <i>S. mystinus</i> )	167	Sculpins	160
Bocaccio ( <i>S. paucispinis</i> )	137	<b>SHARKS</b>	
Canary ( <i>S. pinniger</i> )	146	Other (if salmon, spiny dogfish or Pacific sleeper shark – use specific species code)	689
Chilipepper ( <i>S. goodei</i> )	178		
China ( <i>S. nebulosus</i> )	149	Pacific sleeper	692
Copper ( <i>S. caurinus</i> )	138	Salmon	690
Darkblotched ( <i>S. crameri</i> )	159	Spiny dogfish	691
Dusky ( <i>S. variabilis</i> )	172	<b>SKATES</b>	
Greenstriped ( <i>S. elongatus</i> )	135	<b>Whiteblotched</b>	<b>705</b>
Harlequin ( <i>S. variegatus</i> )	176	<b>Aleutian</b>	<b>704</b>
Northern ( <i>S. polyspinis</i> )	136	<b>Alaska</b>	<b>703</b>
Pacific Ocean Perch ( <i>S. alutus</i> )	141	Big	702
Pygmy ( <i>S. wilsoni</i> )	179	Longnose	701
Quillback ( <i>S. maliger</i> )	147	Other (Use specific species code for skate species listed above)	700
Redbanded ( <i>S. babcocki</i> )	153	<b>SOLE</b>	
Redstripe ( <i>S. proriger</i> )	158	Butter	126
Rosethorn ( <i>S. helvomaculatus</i> )	150	Dover	124
Rougheye ( <i>S. aleutianus</i> )	151		

English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, magestic	875
Turbot, Greenland	134

## **4 Sources**

National Marine Fisheries Service (NMFS). 2007. Alaska Groundfish Harvest Specifications Final Environmental Impact Statement. Juneau, AK. January 2007.

NMFS 2009. Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis For the Arctic Fishery Management Plan And Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs. Juneau, AK. August 2009.

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